S T A T E O F M I C H I G A N

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **SEMCO ENERGY GAS COMPANY** for approval to implement a charge relating to capacity improvements made at the Northern Natural Gas Houghton Gate Station and Houghton Branch Line.	)	Case No. U-16125

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on October 7, 2010.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before October 22, 2010, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 28, 2010. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

Daniel E. Nickerson, Jr.

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Daniel E. Nickerson, Jr.
Administrative Law Judge

October 7, 2010
Lansing, Michigan
dmp

S T A T E O F M I C H I G A N

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **SEMCO ENERGY GAS COMPANY** for approval to implement a charge relating to capacity improvements made at the Northern Natural Gas Houghton Gate Station and Houghton Branch Line.	)	Case No. U-16125

PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On October 30, 2009 SEMCO Energy Gas Company (SEMCO) filed an application with the Michigan Public Service Commission (Commission). The application seeks approval for SEMCO to implement a surcharge relating to capacity improvements at the Northern Natural Gas Houghton Gate Station and Branch Line. The proposed surcharge would apply to SEMCO's GCR customers and to SEMCO's lone transportation customer Michigan Technological University (MTU).

Commission Staff (Staff) filed its appearance and MTU filed a petition to intervene. At a prehearing conference held on December 17, 2009 before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ), SEMCO was represented by attorney Sherri A. Wellman, Commission Staff (Staff) was represented by Assistant Attorney General Vincent J. Leone and MTU was represented by attorney Michael J.

Brown. MTU was granted intervention and a schedule was set for the remainder of the case.

On January 14, 2010 SEMCO filed amended testimony and revised exhibits. On April 16, 2010 MTU filed testimony. On May 7, 2010 SEMCO filed rebuttal testimony. Staff did not file testimony in this case.

On July 22, 2010 an evidentiary hearing was held. Two witnesses were cross-examined. The remaining prefiled testimony was bound into the record by agreement of the parties.

On August 18, 2010 initial briefs were filed by SEMCO, Staff and MTU. On September 1, 2010 reply briefs were filed by SEMCO and MTU. Staff did not file a reply brief.

The record consists of two volumes of transcripts totaling 114 pages and 23 exhibits admitted into evidence.

II.

BACKGROUND

On September 29, 2009 the Commission approved a settlement agreement in SEMCO's gas cost recovery (GCR) plan case for the 12-month period ending March 31, 2010. The case was docketed as MPSC Case No.U-15702. MTU was not a party to MPSC Case No. U-15702. A settlement agreement was reached among the parties to MPSC Case No. U-15702. A major component of the settlement agreement involved in MPSC Case No. U-15702 which is at issue in this case involves the provision which provides that MTU should be responsible for 15% of the costs of the capacity

improvements of the Northern Natural Gas (NNG) facilities supplying SEMCO with natural gas.

Prior to the settlement in MPSC Case No. U-15702, SEMCO, Staff, the Attorney General for the State of Michigan (AG), and the Residential Ratepayer Consortium (RRC) had filed direct cases in that case. SEMCO's initial position in its prefiled testimony in MPSC Case No. U-15702 skewed the perceptions concerning any financial responsibility by MTU for the costs of the capacity improvements. SEMCO's initial position was that the financial liability be allocated only to its GCR customers. During discussions and as MPSC Case No. U-15702 progressed, SEMCO's position became aligned with the position of the other parties. The position which SEMCO adopted while aligning itself with the other parties to MPSC Case No. U-15702 was that 15% of the costs for the capacity improvements should be allocated to MTU as a transportation customer.

As stated above, ultimately, in MPSC Case No. U-15702, the parties reached a settlement. A provision of the settlement agreement tagged MTU with financial responsibility for 15% of the costs of the capacity improvements. The Commission approved the settlement agreement. However, the Commission also specifically ordered that SEMCO initiate a separate proceeding (this case) to seek approval to implement a surcharge over a five-year period to those transportation customers using facilities of NNG.

III.

DISCUSSION

A. Settlement Agreement/Lack of Notice and Due Process

MTU's position, in this case, is that it did not have proper notice which would have alerted it to the fact that MPSC Case No. U-15702 was anything but a standard GCR case. MTU further argues that due process was lacking since it was not afforded an opportunity to be heard prior to it being tagged with financial responsibility for the costs of the capacity improvements.

Much of MTU's brief is devoted to the discussion of it having a lack of notice and a lack of due process concerning the issue of the costs of the capacity improvements and the apportionment of the costs to it as SEMCO's only transportation customer. MTU rightly asserts that there was nothing in the caption, application, direct testimony, and rebuttal testimony of SEMCO which would have alerted MTU to any financial responsibility for the capacity improvements as part of the GCR plan case. MTU argues that due process requires that it should have had notice and an opportunity to be heard on the proper apportionment of the costs. MTU notes that as SEMCO's only transportation customer the full apportionment of 15% of the cost falls to MTU.

The ALJ recognizes and accepts all of MTU's assertions regarding the initial application in MPSC Case No. U-15702 lacking proper notice and a lack of due process. The ALJ also recognizes and accepts MTU's assertion that the prefiled direct and rebuttal testimony of SEMCO lacked any content which would show that a settlement agreement would be reached which would include a financial responsibility for the costs of the capacity improvements to MTU.

The ALJ is convinced that none of MTU's assertions or arguments concerning the lack of notice and lack of due process in MPSC Case No. U-15702 really bears on the findings which are to be reached or the outcome of this case. This case was initiated to give MTU and other interested parties an opportunity for a full and complete hearing. Toward that end, MTU received proper notice of this case. The proceedings of this case represent proper due process of law.

The general rule established by the United States Supreme Court as it relates to MTU's claims of a lack of notice and a lack of due process are based on a determination of what constitutes a final deprivation. The ALJ finds that the settlement agreement in MPSC Case No. U-15702 was not a determination by the Commission of any final deprivation of MTU's claims regarding financial responsibility of the capacity improvements. As such, the following provisions would apply:

> . . . the usual rule of this Court has been that a full hearing at some time suffices. 'We have repeatedly held that no hearing at the preliminary stage is required by due process so long as the requisite hearing is held before the final administrative order becomes effective. ' 'It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing and a judicial determination.' *Arnett v Kennedy,* 416 US 134, 187; 94 S CT 1633 (1974); Opp Cotton Mills v Administrator, 312 US126; 61 S Ct 524 (1941)

It is clear to the ALJ that notice and due process demands have been satisfied by the notice and hearing in this case. This case is not too little. This case is not too late. What took place in the settlement agreement in MPSC Case No. U-15702 was preliminary to this case. MTU did not have property rights (financial responsibility) finally determined as a result of the settlement agreement in MPSC Case No. U-15702. While it may be true that the genesis of the plan apportioning the costs of the capacity improvements was found in MPSC Case No. U-15702, this case represents MTU's

opportunity for a full and complete hearing, after proper notice, on the reasonableness of any apportionment of the costs of the capacity improvements. The decision which may not result in any final deprivations will be based on the record established in this case not the settlement agreement reached in MPSC Case No. U-15702.

B. Pipeline Plant Improvements

SEMCO, in this case, provided testimony and exhibits in support of its request. The capacity improvements were made by NNG to facilities it owns which is the Houghton Gate Station and the Houghton Branch Line (collectively referred to as pipeline plant). The pipeline plant is used to transport, measure, reduce pressure and deliver natural gas to SEMCO's UP West distribution system for the benefit of its GCR customers. The pipeline plant is also used to serve SEMCO's gas transportation customer. Again, MTU is SEMCO's only gas transportation customer. MTU takes delivery of natural gas which is transported over SEMCO's gas distribution system to MTU's facilities.

The pipeline plant improvements made in 2009 include improvements to the Houghton Gate Station and 2.2 miles of the 3" Houghton Branch Pipeline. SEMCO asserts that these improvements were necessary due to an increase in demand which exceeded the existing capacity. SEMCO explains that without the increased capacity resulting from the pipeline plant improvements, SEMCO would have received winter period overrun costs which would have put its GCR customers at risk of pipeline overrun and penalty charges including MTU. In addition to increased costs, there were significant operational consequences which could have resulted, including the loss of gas pressure and inadequate supply which could have resulted in outages.

SEMCO states that the need for the capacity improvements was a combination of capacity requirements for both SEMCO's GCR customers demand requirements and MTU's demand requirements. Prior to NNG's capacity improvements the maximum capacity of NNG's Houghton gas was 266 Mcf per hour and the NNG's Houghton branch line was 259 Mcf per hour. In November 2007, SEMCO met with NNG. SEMCO was notified of capacity overruns at NNG's Houghton Interconnection facilities. Between November 2006 and March of 2009, NNG's Houghton interconnection facilities experienced 106 capacity overruns. During that period of time, MTU's hourly demand ranged from 69 to 108 Mcf per hour. SEMCO's remaining hourly demand ranged from 153 to 203 Mcf per hour. Thus, neither the demand of SEMCO's GCR customers nor MTU's demand alone exceeded the maximum capacity. SEMCO argues that this supports its position that MTU should share in the financial costs of the capacity improvements. The ALJ agrees.

The ALJ finds that SEMCO was advised to take necessary corrective action by eliminating excessive demand or providing financial aid for construction of improved facilities. The ALJ finds Mr. Fitzgerald's testimony convincing and not contradicted. He testified that if these capacity improvements had not been made then NNG would have issued winter period system overrun limitations which would have put customers at risk of daily pipeline overrun and penalty charges. Mr. Fitzgerald also testified that there would be operational consequences including a loss of gas pressure and inadequate supply which could have resulted in outages.

SEMCO states that NNG does not have an obligation to bear the costs of the improvements. SEMCO states that under Section 4 of the General Terms and

Conditions of NNG's FERC approved gas tariff, NNG may pass along to its customers the costs. SEMCO states that it was deeply involved in attempting to minimize the cost impact to its customers. SEMCO points out that the total cost of the improvements was $3,321,335.85 which was actually about $1.6 million less than NNG's final cost estimates. These statements were not contradicted.

SEMCO argues that it is fair for MTU, as a transportation customer, using capacity to contribute to the costs of the capacity improvements. SEMCO insists that since MTU's capacity needs contributed to the daily overruns, it should contribute toward the costs of the capacity improvements. Furthermore, SEMCO argues that MTU will continue to benefit from the capacity improvements. First, if the capacity improvements had not been made then MTU itself would have been subject to curtailments. Such curtailments may have required MTU to secure gas supply at even greater costs. Second, MTU has indicated that it will likely remain a customer of SEMCO even if it migrates to alternative energy supply. MTU will also have the assurance of knowing it will be able to rely on gas supply when needed to supplement or replace MTU's other alternative gas supply.

SEMCO proposes MTU's fair share of the costs of the improvements at 15% or a charge of $0.3070 per Dth spread over a five-year period. Exhibit A-1. SEMCO further notes that based on MTU's average hourly and daily demands during the periods of capacity overruns, a fair share of MTU's obligation could either be 33% or 38%. Since, it was initially proposed that 15% would be a fair allocation of MTU's share of the costs of the capacity improvements, MTU has gone from being an interruptible transportation customer to a firm transportation customer. Even so, SEMCO maintains in its original

proposal that MTU's fair share remain at 15%. SEMCO concludes that its request is reasonable and in the public interests.

Staff supports SEMCO's request. Staff reviewed the testimony of this case as well as the testimony filed in MPSC Case No. U-15702. Staff also conducted a technical review of all of the material available. Staff bases its support on the recognition that SEMCO serves its GCR customers and MTU from the facilities which were improved.

Staff also viewed MTU's historic demand volumes, its theoretical peak demand and possible future level of demand as a reasonable basis for MTU to be responsible for the costs of the capacity improvements. Staff calculates that MTU's current demand is about 33% of SEMCO's capacity.

Staff also concurs that a five-year period is a reasonable period of time to spread the costs of the capacity improvements. Staff notes that the five-year period reflects SEMCO's obligation to the payment arrangement agreed to in the FERC approved contract between SEMCO and NNG.

Staff argues that MTU does not contradict either SEMCO's or Staff's analysis as to MTU's usage. Staff further agrees with SEMCO that MTU will benefit from the enhanced facilities into the future. Staff concludes that a 15% allocation is more than reasonable and is certainly fair.

The ALJ has already noted that MTU's arguments concerning the lack of proper notice and lack of due process as inapposite to this case. The ALJ having so ruled looks to the evidence presented in this case. In this case, MTU does not dispute much of the salient evidence. The bulk of MTU's arguments concerning lack of notice and

due process and prejudice are addressed by the notice and due process afforded through this case. The ALJ find that it is worth noting here that MTU's claim of prejudice is not that MTU was prejudiced in this case as a result of the outcome of MPSC Case No. U-15702, rather, MTU's claim of prejudice is related to the lack of notice and due process in MPSC Case No. U-15702.

The ALJ finds that the evidence presented in this case supports a finding that SEMCO's request is reasonable. The ALJ finds that the arguments offered by the parties support SEMCO's request as reasonable. The ALJ finds that the law, based on a standard of reasonableness, further supports SEMCO's request in this case.

The salient facts which are undisputed are that MTU currently accounts for about 33% of the demand which SEMCO serves. MTU will remain a customer of SEMCO and has in fact migrated from being an interruptible customer to becoming a firm transportation customer. The capacity improvements were in fact necessary and of a very real benefit to SEMCO's customers including MTU. The costs of the capacity improvements themselves were not challenged and in fact came in considerably under estimate. The ALJ finds that NNG is not legally required to bear the costs of the capacity improvements. The ALJ finds that 15% is a fair allocation given the fact that MTU's demand represents at least 33% of SEMCO's total service obligations. The ALJ finds that all of these facts support a finding of the reasonableness of SEMCO's request.

MTU argues that SEMCO's position concerning MTU bearing a financial responsibility changed quickly after the pipeline rupture on NNG's system on June 22, 2009 near Wakefield. NNG posted a *force majeure* on June 24, 2009. Mr. Fitzgerald

testified that the rupture changed everything in terms of the capacity perspective of NNG's system. Mr. Fitzgerald testified that as a result NNG's facilities were operating at a lower pressure after the rupture. MTU argues that it had no responsibility for the rupture and as such should not be financially responsible for the capacity improvements.

Also, MTU places much significance on the testimony of its witness Mr. Taivalkoski. Mr. Taivalkoski states that MTU did not cause the NNG pipeline rupture. Mr. Taivalkoski testified that the rupture created an emergency need for a larger line to serve SEMCO's city gate. He further testified that the emergency need was precipitated by NNG's action in reducing the pressure on their Marquette branch line. He further testified that MTU's gas use did not cause the need for the capacity improvements.

The ALJ finds that the evidence clearly shows that the rupture changed things but the rupture came after the November 2007 meeting where NNG notified SEMCO of the capacity overruns and the need for upgrades. The rupture came after there had already been 106 overruns between November 2006 and March of 2009. Furthermore, while it is true, the rupture moved things along more quickly; the ALJ finds that the proposition that the rupture changed SEMCO's position is secondary to whether the request is reasonable under the circumstances.

IV.

CONCLUSION

The ALJ recommends that SEMCO's request to implement its proposed charge of $0.3070 per Dth be granted.

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

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Daniel E. Nickerson, Jr.
Administrative Law Judge

October 7, 2010
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